

Before the
Federal Communications Commission
Washington, D.C. 20554

ORIGINAL
RECEIVED
DEC 16 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

)
Amendment of the Commission's
Rules to Establish Part 27, the
Wireless Communications Service)

) GN Docket No. 96-228
)
)
)

DOCKET FILE COPY ORIGINAL

REPLY COMMENTS OF
SATELLITE CD RADIO, INC.

Satellite CD Radio, Inc. ("CD Radio"), by its attorneys, hereby replies to the comments filed in response to the Commission's Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding. CD Radio is an applicant to construct and operate a satellite digital audio radio service ("SDARS") in frequencies adjacent to those proposed to be reallocated in this proceeding for a new Wireless Communications Service ("WCS").

I. INTRODUCTION

In the NPRM, the Commission proposes to designate the 2305-2320 MHz and 2345-2360 MHz bands (hereinafter "the reallocated bands") for WCS. In order to encourage the most efficient use of the spectrum, the Commission intends to allow licensees to use the spectrum for a variety of wireless technologies, including SDARS.¹ Additionally, the Commission plans to

¹ Wireless Communications Service, Notice of Proposed Rulemaking, GN Docket No. 96-228, at ¶ 1 (Nov. 12, 1996) ("NPRM").

0-4

allocate WCS licenses through auction in order to make the spectrum available "to those who value it most highly and therefore are most likely to put it to its most economically efficient use."²

II. THE COMMISSION SHOULD AUCTION SPECTRUM FOR SDARS BEFORE AN AUCTION IS HELD FOR THE REALLOCATED SPECTRUM ON, OR BEFORE APRIL 15, 1997

CD Radio supports the Commission's decision to auction promptly the reallocated bands for use in any authorized wireless service, including SDARS. CD Radio urges the Commission, however, to auction the reallocated bands only after an auction is held for SDARS.³ Auctioning SDARS first is important because of the possibility that, nearly seven years after CD Radio proposed to provide SDARS to consumers, a participant in the reallocated spectrum auction could obtain spectrum that can be used for SDARS before CD Radio has had a chance to bid on the spectrum designated for its service.⁴ Such a head start could give a new party a critical "first mover" advantage, that would unfairly prejudice CD Radio in its efforts to provide SDARS to consumers.

As the Commission is well aware, CD Radio conceived of, and engaged in much of development and experimentation for SDARS, a process that subjected CD Radio to considerable expense. Now, after substantial delay, equity dictates that CD Radio be given, at the very least,

² Id. at ¶ 18.

³ See Comments of Primosphere Limited Partnership at 2-4 (Dec. 4, 1996).

⁴ The statutory directive that the reallocated spectrum be auctioned no later than April 15, 1997 is not an impediment to auctioning the SDARS spectrum prior to the reallocated spectrum. At this point, all of the SDARS applicants have withdrawn their pioneer's preference requests, thus eliminating any reason why the SDARS auction cannot be held well before April 15th. See Primosphere at 3.

an opportunity to be one of the first providers of SDARS to the public. It would be grossly unfair for the Commission to schedule the auction for the reallocated spectrum prior to the auction for SDARS. Instead, equity dictates that the Commission auction the SDARS spectrum before an auction is held for the reallocated spectrum on, or before April 15, 1997.

III. THE COMMISSION MUST ADOPT OUT-OF-BAND EMISSIONS LIMITS THAT ADEQUATELY PROTECT SDARS LICENSEES

In adopting out-of-band emissions limits for licensees in the reallocated spectrum, CD Radio acknowledges the Commission's efforts to balance the goals of protecting adjacent services and enabling low WCS equipment costs. The out-of-band emissions limits proposed in the NPRM for WCS operations, however, are insufficient to protect adequately SDARS operations.

As others have noted in their comments in this proceeding, the proposed permissible levels for adjacent channel interference will severely compromise the reliability of SDARS reception.⁵ For example, a hand-held WCS transmitter could drown out a SDARS receiver whenever it is operated within a few feet. One can imagine the frequent periods of interference that SDARS subscribers would be forced to endure while driving in moderate, or heavy traffic, with numerous adjacent drivers utilizing WCS devices. Instead, the Commission should adopt an out-of-band emissions level for WCS that adequately protects SDARS. Such protection can be achieved without imposing large additional expense on WCS equipment, particularly since the major practical interference problems will occur near the edges of the frequency bands.

⁵ See Primosphere at 5; Comments of Digital Satellite Broadcasting Corporation at 3-4 (Dec. 4, 1996).

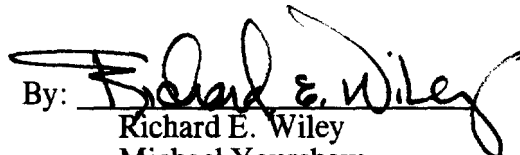
IV. CONCLUSION

CD Radio supports the Commission's proposal to establish a new Wireless Communications Service in the 2305-2320 and 2345-2360 MHz bands, and make the spectrum available to a wide variety of services, including SDARS. In order to achieve the most equitable result, however, the Commission should auction the reallocated spectrum only after an auction is held for SDARS. Additionally, the Commission should adopt out-of-band emissions limits that adequately protect SDARS operations. These steps will help to ensure that prompt and successful introduction of long-awaited wireless consumer services to the public.

Respectfully submitted,

SATELLITE CD RADIO, INC.

Peter K. Pitsch
Pitsch Communications
2300 N Street, N.W., Suite 600
Washington, D.C. 20037
(202) 663-9039
Of Counsel

By: 
Richard E. Wiley
Michael Yourshaw
Carl R. Frank
Bruce A. Olcott
of
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

Its Attorneys

Dated: December 16, 1996